IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7782 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RELIANCE & OTHER MILLS WORKERSUNION

Versus

COMMISSIONER OF POLICE

Appearance:

MR MUKUL SINHA for Petitioner

MR KT DAVE, AGP for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 14/08/2000

C A V JUDGEMENT

1. In this petition under Article 226 of the Constitution the petitioner Union has challenged the order dated 6.7.2000 passed by the Additional Police Commissioner (Special.Branch), Ahmedabad City rejecting the petitioner's application, dated 5.7.2000 for permission to stage dharna with loud speakers in front of the Reliance Industries Limited in GIDC Estate at Naroda in Ahmedabad.

2. At the hearing of the petition, Civil Application No.5735/200 also came to be filed by Reliance Industries Ltd praying that the petition may be dismissed for nonjoinder of necessary parties, but it was ordered to be heard with the main petition.

3. The Additional Commissioner of Police(Special Branch) has filed affidavit in reply dated 20.7.2000 stating that pursuant to the petitioner's application dated 5.7.2000 the report of the Police Inspector, Naroda Police Station was called for. The said officer sent his report dated 6.7.2000 stating earlier that the Court had allowed the workers to have activities 100 Mtrs away from the main gate of the company at a particular place. The place suggested in the application, dated 5.7.2000 is not the same. It was further pointed out that allowing the petitioner to use loud speaker from 7.7.2000 to 21.7.2000 as requested by the petitioner will cause great nuisance to the people of surrounding areas including the Reliance Company and other factories situated there. Hence, the permission should not be granted. The said Police Inspector had also consulted the Assistant Police Commissioner and the Deputy Commissioner of Police.

The Additional Police Commissioner has further stated that in view of the above report, in the public interest at large the the respondent considered not to allow the petitioner to use loud speaker and therefore the impugned order, dated 6.7.2000(at annexure 5 to the petition) was passed.

4. Before narrating the submissions made by the learned counsel, it is necessary to refer to the previous litigations relevant to the subject matter of this petition.

4.1 The Reliance Industries had filed Civil Suit No.1672/97 in the City Civil Court at Ahmedabad. The prayer in the suit was to restrain the petitioner Union from holding demonstrations, dharnas, fasts, gheraos and anyother agitational activities within the premises and within the radius of 300 meters of the five gates of the premises of the petitioner-company. The City Civil Court granted the ad-interim injunction and aggrieved by the same Special Civil Application No.2910/97 was filed and in that petition following order came to be passed:

"Without prejudice to the rights and contentions of the parties, it is directed by consent of the parties that the petitioner-Union may carry on

its agitation in a peaceful and nonviolent manner and will not obstruct ingress and egress of any person or vehicle from any of the five gates of the respondent factory. It is also agreed that no such activities will be carried out within 200 feet of the main gate.

The hearing in the trial court has already started and the learned counsel for the plaintiff submits that they will finish their part of the argument within one hour or so on 17.4.1977.

In view of the above, in presence of the parties, it is directed that the parties shall act according to the aforesaid arrangement and to that extent, the ad interim order of the trial court will stand modified and vacated.

However, it is made clear that the trial court shall be free to decide the matter, without being influenced by this arrangement, one way or the other. It is hoped that the trial curt will be in a position to decide the matter expeditiously, without further delay, in view of the crucial time element involved in the matter.

The petition is disposed of accordingly."

4.2 Subsequently, the petitioner Union moved another petition being Special Civil Application No.4036/97 and in that petition order came to be passed on 5.6.97 on the lines of the order dated 15.4.97 in Special Civil Application No.2910/97. Thereafter, on 6.6.97 the following order came to be passed:

"The earlier arrangement and direction as recorded in this Court's order passed yesterday shall continue till June 18, 1997, subject to the following modifications:

(1) Mr.Bhatt for the Union states that its members will resort to slogan shouting without use of any loudspeakers.

(2) As and when the union and its members propose to hold any public meeting or to make use of loudspeakers, they will approach the Commissioner of Police for his permission.

(3) As and when such application is made to the Police Commissioner, he will decide the same

in accordance with law"

4.3 Thereafter the Reliance Industries Limited filed Misc.Civil Application No.2335/97 alleging that the petitioner Union had committed breach of orders passed by the City Civil Court and the directions by this Court in Special Civil Application Nos.2910/97 and 4036/97. However, by consensus of the parties, the Court passed order dated 14.10.1998. The Court recorded the consensus that the agitational activities would be carried on by the petitioner union at a particular spot shown in the map produced before the Court further adding that it shall be open for the Union to move away from that site towards right direction, i.e. towards village Muthia in case the respondents so desire. The consensus order was passed for disposal of contempt proceedings and without prejudice to the rights and contentions of the parties before all other courts.

4.4 The Civil Suit abovereferred has been withdrawn by now.

5. In the background of the aforesaid proceedings, Dr.Sinha, learned counsel for the petitioner Union submitted that the petitioner Union has been carrying on its agitational activities at a spot opposite the Reliance Credit Society where all the employees meet and further says that the said spot is towards village Muthia and that the petitioner Union is not committing any breach of previous orders. In fact, it was contended by Dr.Sinha that the previous orders were during the pendency of Civil Suit No.1672/97 since it has been withdrawn, the interim orders passed therein and conditions imposed in those orders would not survive. However, without prejudice to said contention it is submitted that the petitioner wanted to use loud speakers at the spot opposite Reliance Credit Society and the petitioners have fundamental right to use loud speakers while carrying on their agitational activities. He has placed reliance on the decision of the Division Bench of this Court in Ahmedabad Textile Research Association vs Atira Employees Union and Anr reported in 1993(1) GCD 7(Guj) 7 particularly on the observations made by the court in paras 6 and 7 of the judgment.

6. On the other hand, Mr.K.T.Dave, Learned Asst.Government Pleader for the respondent-Police Officers has opposed the petition firstly on the ground that the petition has become infructuous by now as the permission was sought for the period from 7.7.2000 to

21.7.2000. Hence, petition has become infructuous. Despite that the petitioner union in future may make a fresh application and the same will be considered by the respondent authorities in accordance with law. It is further submitted that for the reasons already mentioned in the affidavit in reply and also in view of the report of the Police Inspector, Naroda Police Station the petitioner's application was rejected.

7. Mr.Tanna, Learned counsel for the Reliance Industries submitted that the petitioner union has no right to use loud speakers as it would disturb the work of the Reliance Industries as well as industries in the surrounding areas. It is further submitted that the petitioner union is agitated about the termination of some of the employees of the Company for whom references are already pending before the Labour Court. He has submitted the list of such references and submitted that that in this view of the matter it is open to the union to fight out those cases before the Labour Court and the company is ready to cooperate for early disposal of all those references.

8. Having heard the learned counsel for the parties, and also the learned counsel for Reliance Industries Limited, it appears to the Court that though technically the petition has become infructuous because the period for which the petitioner Union had prayed for permission to use loud speakers has come to an end by afflux of time, if the petitioner Union makes a similar application in future, the same is likely to meet the same fate in view of the stand taken by the respondent-police officer in the affidavit in reply. Hence, the Court wold like to make some observations before disposing of the petition.

9. As far as the spot where the petitioner Union is carrying on its agitational activities the Police officers as well as the company appear to be of the view that is not the same spot which was agreed to in the contempt proceedings. According to Dr.Sinha for the Union,the particular spot indicated in the map in the contempt proceedings is full of chemicals and rainy water at the relevant time. Be that as it may, even as per the order passed by the Contempt Bench the Union was permitted to carry on its agitational activities on the spot on the road marked in the map and also any other spot that is towards village Muthia and on perusal of the said map it transpires that the spot opposite the Reliance Credit Society is on the right side towards village Muthia and therefore there is no breach of any order passed by this Court in the contempt proceedings.

In that view of the matter it is not necessary to go into the contention of Dr.Sinha for the Union that once the civil suit is withdrawn the conditions imposed therein do not survive.

10. As far as the apprehension voiced by the police authorities as well as the company that granting permission would cause nuisance and disturbance to people of surrounding areas including the Reliance industry and other factories, it appears that the authorities appear to have proceeded on the basis as if the application could be granted entirely or not at all. It is true that if the petitioner Union were permitted to use loud speakers for 15 days (from 7.7.2000 to 21.7.2000) it would cause nuisance and disturbance to various industrial units in the GIDC estate at Naroda. However, while cnsidering the application of the petitioner union for permission to use loud speakers, the authorities could have exercised their discretion for considering whether the loud speakers could be permitted for a limited period of one hour or two. Even such a permission could be granted for an hour or two for a day and thereafter be extended on day to day basis depending on the situation on the spot without requiring the union to give fresh application on consecutive days. However, this decision is required to be taken by the authorities exercising their discretion properly in the light of the relevant provisions of Section 33(1)(r)(iii) of the Bombay Police Act, 1951, which reads as under :-

"(r) licensing, controlling or, in order to prevent obstruction inconvenience, annoyance, risk, danger or damage of the residents or passengers in the vicinity, prohibiting :-

(i) & (ii) ... ...

(iii) the using of a loudspeaker in or near any public place or in any place of public entertainment."

11. Further this Court also would refer to the following observations by the Division Bench of this Court in the case of ATIRA vs ATIRA EMPLOYEES' UNION (supra):

"it is not within the purview of the Civil Court to prevent or interfere with the legitimate rights of the workmen to pursue their demands by means of strikes or agitations or other lawful activities so long as they do not indulge in acts

unlawful, tortious and violent. For the sake of reference we enumerate below the decisions which have gone on the above line of thinking:

1. AIR 1963 Patna 170
2. AIR 1968 Calcutta 407
3. 1975 1 LLJ 33 (Kerala)
4. 1981 Labour & Industrial Cases 1220(Bombay)
5. 1998 Labour & Industrial Cases 1067(Delhi)
6. 1990(61 FLR) page 708(Kerala)

Any agitation by the workmen must be peaceful and not violent. Any concerned movement by workmen to achieve their objectives is certainly permissible even inside the industrial establishment within the working hours, so long it does not prove to be unlawful, tortious or violent. Demonstrations and dharnas peaceful when they are, have now come to be accepted as falling within the permissible sphere of agitations by Labour. Demonstrations and dharnas may cause inconvenience to the management. But they are weapons, as strike is, in the armory of the labour to pressurise the management to accede to their demands. Such demonstrations and dharnas, when they do not turn unlawful, violent and tortious, can not be curbed by orders of Civil Court and would come within the purview of section 18 of the Act. Therefore, when these trade union activities will go out of the protected sphere will depend upon the facts and circumstances of each case. That there is trade dispute within the meaning of the Act in the present case can not be put in issue. Euqally so workmen of the plaintiff are in the field of agitation to secure there demands is not in dispute. It is also the admitted case that the workmen indulged in demonstrations, dharnas, shouting of slogans and displaying placards only during the lunch recess".

12. It also appears to the Court that a large number of reference are pending before the Labour Court at Ahmedabad which concern the termination/dismissal of employees of Reliance Industries. In all there are 51 such cases as per the list submitted by Mr.Tanna which is annexed to this order. It would be just and proper to direct the Labour Court to hear and decide said references at the earliest and in any case within six months, as many of them are pending since 1995 and the

company is also prepared to cooperate for expeditious disposal of those references.

13. In view of the above discussion, the following directions are issued :-

(a) The Labour Court at Ahmedabad shall hear and decide the rerferences which are set out in a statement annexed to this order as expeditiously as possible and in any case within six months from the date of receipt of writ of this Court or a certified copy of this order, whichever is earlier.

(b) As and when the petitioner union makes a fresh application for permission to use loud speakers the respondent-officers shall consider the same in light of the observations made in this order.

14. The petition is accordingly disposed of in terms of the aforesaid observations and directions.

Rule is made absolute to the aforesaid extent with no order as to costs.

14.8.2000 (M.S.SHAH,J)